

## Response to FCC Request for Comment on Can Spam Act, Dated March 11, 2004

### Overview

The Mobile Marketing Association is the premier global association that strives to stimulate the growth of mobile marketing and supporting technologies. MMA members include agencies, advertisers, handheld device manufacturers, carriers and operators, retailers, software providers and service providers, as well as any company focused on the potential of marketing via mobile devices.

As a body, the MMA works for aggressive industry self-regulation. Protection of consumer rights to privacy and control of their mobile device is paramount to the success of the industry and the positive experience of the consumer.

Since its inception in 2000, the MMA has stood firmly against the distribution of any unsolicited message to mobile devices. In November 2003, the MMA created an aggressive industry Code of Conduct that the FCC should consider adopting, or at least use as a framework for rulemaking in accordance with Section 14 of the Can Spam Act.

This response is divided into two sections: 1) Specific answers to the questions specified in your press communiqué dated March 11; and 2) the Code of Conduct developed by the MMA.

### Response to Specific Questions

1. The ability of senders to identify commercial messages. It is the position of the MMA that all commercial messages be opted-in by the consumer and must clearly identify the advertiser and include clear opt-out instructions. No messages should be sent to the consumer without the consumer first requesting them.

2. Providing consumers the ability to block unsolicited messages. We believe in control residing with the individual consumer. That is why we have elected an active opt-in only process with a just as easy to use opt-out methodology. Providing consumers the ability to sign on to a national opt-out list is worthy, but will create many operational problems for the consumer and all parties in the messaging value chain. The MMA has, however, devised plans for a commercially controlled, technology-driven solution that allows only legitimate marketers to send messages to an opt-in database of consumers. When paired with the Code of Conduct, this solution might allow the industry to block unsolicited SMS messages. We would welcome the opportunity to work with the FCC on this plan.

3. Exempting commercial cellular providers from having to obtain prior authorization for mobile marketing. It is the opinion of the MMA that the implied consent provision of the Can Spam Act should apply to commercial cellular providers. However, the cellular provider should adhere to the Code of Conduct

when delivering any marketing message. For instance, a carrier is able to send an unsolicited marketing message to their customers regarding a certain campaign. However, that message must be accompanied by a clear opt-out mechanism. As an example, a carrier promoting a contest for the NCAA is allowed to notify its base that the contest exists, but not allowed to opt everyone in to that contest (which likely involves a series of messages and trivia questions delivered via SMS). Instead, the notification can occur and consumers interested in playing the game can opt-in. Those who don't opt-in should not receive any further messages regarding the campaign and should be given the option to opt-out of NCAA messages in the future. Similarly, many carriers and other companies use text messaging as a means of communicating with their customers regarding customer relationship management issues, such as an advisory of new services or features. The MMA views this form of notification, which may or may not invite an action by the consumer, to be completely acceptable.

4. How senders can comply with the act. Existing technology and addressing formats, combined with privacy initiatives of industry organizations and leading companies, have made it easy to control messaging interaction. Consumer opt-in is driven to a common short code owned within the closed carrier environment. The carriers and their agents control use of these common short codes. The consumer must taken action, from their phone or web site, to receive a value-added text message. Opt-out mechanisms are required by all carriers for all of the marketing campaigns currently running on mobile devices in the United States, thanks in part to the aggressive Code of Conduct created by the MMA.

#### About the Code of Conduct

The Code of Conduct was developed by the MMA board-appointed Privacy Advisory Committee (PAC) whose members are Carat Interactive, Cingular Wireless, Procter & Gamble, PocketChoice, The Weather Channel, and VeriSign. The PAC was formed from within MMA member companies.

The CoC was ratified by a majority of MMA board members.

#### Statement from the Privacy Advisory Committee

The Mobile Marketing Association Privacy Advisory Committee realizes the need for a Code of Conduct that is both universal in principle and industry specific in its application. Industries touched by this Code of Conduct are: content providers, carriers, technology providers, advertisers and brands. This code is intended to provide guidelines by which companies market their products and services to consumers. It is not, however, intended to regulate a wireless carrier's ongoing proprietary communication with its current base of subscribers.

In building this code of conduct, we realize that: 1) mobile device marketing has proven to be the most effective means of consumer interaction; 2) marketing on mobile devices is a personal communication with the consumer that must be handled with care for it to succeed; 3) systematic abuses among a minority of marketers caused consumer backlash against all marketers; 4) that current internet privacy policy and verification initiatives may not be effective with mobile

marketing; and 5) that mobile device marketing can be made profitable for both consumers and marketers through a strong Code of Conduct backed by a unified industry.

#### Code of Conduct Summary

The Mobile Marketing Code of Conduct is broken into six categories: Choice, Control, Customization, Consideration and Confidentiality.

#### Choice

Consumers must "opt-in" to all mobile messaging programs. Consumers may Opt-in to a program by sending a text message, calling a voice response unit, registering on a website, or through some other legitimate paper-based method; they opt-in for a specific program only.

#### Control

Consumers must also be allowed to easily terminate -- opt-out -- their participation in an ongoing mobile messaging program through channels identical to those through which they can opt-in to a given program. Programs with multiple message strings must provide an opt-out option for each message.

#### Customization

As mobile messaging campaigns are most effective when appropriately targeted, consumers could be asked to provide demographic, preferences and other information.

#### Consideration

The consumer must receive and/or be offered something of value to them in return for receiving the communication. Value may be delivered in the form of product and service enhancements, reminders, sweepstakes, contests, information, entertainment, discounts or location based services.

#### Constraint

The marketer, content provider, or aggregator must provide a global "throttling mechanism" capable managing and limiting mobile messaging programs to a reasonable number of programs. Consumers should be able to override the throttle.

#### Confidentiality

The Mobile Marketing Association will align with TRUSTe with specific provisions on not renting, selling or sharing personal information about consumers participating in programs delivered through its platform with other people or nonaffiliated companies except to provide the products and services requested.

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